

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**DAVID P. FOLEY,**

Plaintiff,

**v.**

**Case No. 20-CV-576**

**JASON ZABEL, *et al.*,**

Defendants.

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**ORDER**

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On August 18, 2021, the court entered judgment dismissing this case on the ground that plaintiff David P. Foley, a prisoner representing himself, failed to exhaust his administrative remedies before filing this lawsuit. (ECF No. 84.) Foley subsequently filed a motion for reconsideration of the court's ruling. (ECF No. 85.) The court found that Foley did not articulate a reason for reconsideration, and to the extent Foley's motion was a motion under Federal Rule of Civil Procedure 60(b), the court denied the motion without prejudice, giving leave for Foley to refile the motion. (ECF No. 87.)

Foley has now refiled his motion for reconsideration under Fed. R. Civ. P. 60(b). (ECF No. 88.) Rule 60(b) of the Federal Rules of Civil Procedure allows a court to relieve a party from a final judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence,

- could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . , misrepresentation, or misconduct by an opposing party;
  - (4) the judgment is void;
  - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
  - (6) any other reason that justifies relief.

Foley's motion generally takes issue with the way the evidence was evaluated and considered. That is not a basis for granting his motion. *See Oto v. Metropolitan Life Ins. Co.*, 244 F.3d 601, 606 (7th Cir. 2000) (holding that a motion that "merely took umbrage with the court's ruling and rehashed arguments" was properly rejected by the district court).

**IT IS HEREBY ORDERED** that Foley's second motion for reconsideration (ECF No. 88) is **DENIED**.

Dated in Milwaukee, Wisconsin this 28th day of March, 2022.

BY THE COURT

A handwritten signature in black ink that reads "William E. Duffin". The signature is written in a cursive, flowing style and is positioned above a horizontal line.

WILLIAM E. DUFFIN  
United States Magistrate Judge